

OCT 01 2018

Clerk, U.S. Courts  
District Of Montana  
Missoula DivisionIN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

WAYNE DALE KELLBERG,

Plaintiff,

vs.

FBI PRANK A TWEAKER,

Defendant.

CV 18-106-M-DLC-JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendations on June 13, 2018, recommending that the Court deny Plaintiff Wayne Dale Kellberg's motion for leave to proceed in forma pauperis and dismiss this action. (Doc. 3.) Kellberg failed to timely object to the Findings and Recommendations, and so waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews for clear error those findings and recommendations to which no party objects. *See Thomas v. Arn*, 474 U.S. 140, 149-53 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been made." *Wash. Mut., Inc. v. United States*, 856 F.3d 711, 721 (9th Cir. 2017) (citation omitted).

Having reviewed the Findings and Recommendation (Doc. 5), the Court

finds no clear error in Judge Lynch's Findings and Recommendation. Kellberg's factual allegations are unexplained and cannot give rise to a finding of liability. Further, the only named defendant, "FBI Prank a Tweaker," appears to be a fictitious entity. Because Kellberg's complaint is frivolous, he should not be granted leave to proceed in forma pauperis. 28 U.S.C. § 1915(a).

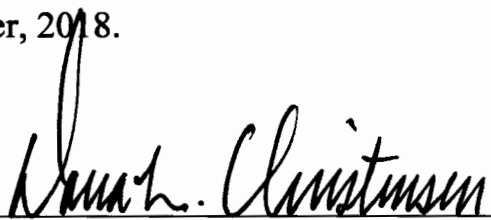
Accordingly, IT IS ORDERED that:

(1) Judge Lynch's Findings and Recommendation (Doc. 3) is ADOPTED IN FULL.

(2) Kellberg's motion for leave to proceed in forma pauperis is DENIED.

(3) This action is DISMISSED.

DATED this 1<sup>st</sup> day of October, 2018.

  
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Dana L. Christensen, Chief Judge  
United States District Court